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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,719	12/20/2005	Jordi Tormo I Blasco	4266-0131PUS1	8746
2292 7590 05/23/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MURRAY, JEFFREY H				
ART UNIT		PAPER NUMBER		
1624				
NOTIFICATION DATE		DELIVERY MODE		
05/23/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/532,719

Applicant(s)

TORMO I BLASCO ET AL.

Examiner

JEFFREY H. MURRAY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 15, 16 and 18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 11-14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Claims 10-14 and 17 are rejected. Claims 1-9, 15, 16, and 18 are withdrawn.
2. Claims 10-14 and 17 are pending in this application. Claims 1-9, 15, 16, and 18 are withdrawn. This action is in response to the applicants' amendment after a non-final and reply filed on February 20, 2008.

Status of Objections

3. The specification was objected to as not properly containing section headings. The objection to the specification is hereby withdrawn in view of applicants' amendments to the specification.
4. The specification was objected to as not properly indicating trademarks. The objection to the specification is hereby withdrawn in view of applicants' amendments to the specification.

Status of Rejections

5. Claims 10-14 are rejected under 35 U.S.C. 101, as failing to comply with the single invention requirement. The rejection of Claims 10-14 is hereby withdrawn in view of applicants' arguments and amendments.

5. Claims 10-13 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The rejection of Claims 10-13 and 17 are hereby withdrawn in view of applicant's amendments to the claims.
6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as failing to distinctly claim the invention. The rejection of Claim 11 is hereby withdrawn in view of applicant's amendments and arguments against the rejection.
7. Claims 10-14 and 17 are rejected under 35 U.S.C. 102(a), as failing to comply with the novelty requirement according to Schmitt, et. al. The rejection of Claims 10-14 and 17 are hereby withdrawn in view of applicant's arguments against the rejection.
8. Claims 10-13 and 17 are rejected under 35 U.S.C. 102(b), as failing to comply with the novelty requirement according to Pees, et. al. The rejection of Claims 10-13 and 17 are hereby withdrawn in view of applicant's arguments against the rejection.
9. Claims 10-12 and 17 are rejected under 35 U.S.C. 102(b), as failing to comply with the novelty requirement according to Pfrengle, et. al. The rejection of Claims 10-12 and 17 are hereby withdrawn in view of applicant's arguments against the rejection.
10. Claims 10-14 and 17 are rejected under non-statutory double patenting. While the applicants arguments are found persuasive, the rejection will be held in abeyance until all claims are considered allowable or cancelled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

New/Maintained Rejections

Claim Rejections - 35 USC § 112, 2nd paragraph

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11. Claims 11-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claims 11-14 recite the limitation "the compound" in claim 10. There is insufficient antecedent basis for this limitation in the claim. Claim 10 refers to a "substituted 6-(2-halogenphenyl)-triazolopyrimidine". No new matter. Appropriate correction is required.

13. Claim 17 is indefinite. The recitation of an intended use, chemical activity, or functional description of some "additional" property for a compound (or moiety/functionality attached to a chemical core) or a composition containing same in a dependent claim, must result in a tangible structural difference between the product and of the independent claim and the product set forth in the dependent claim. In the absence of said structural difference between the product of the independent claim and that of the dependent claim, said dependent claim is seen to be a substantial duplicate, and said recitation is not afforded critical weight and fails to further limit the product in said dependent claim. In the instant claim, claim 17 fails to further limit the composition with the phrase "suitable for controlling phytopathogenic fungi" therefore it is afforded no patentable weight. Appropriate correction is required.

Allowable Subject Matter

14. Claim 10 is allowed. Claim 10 is free of the prior art. The closest prior art to Claim 10 is Pees, et. al., U.S. Patent No. 5,593,996. Pees, et. al., teaches a

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triazolopyrimidine core identical to the current application, but fails to teach the phenyl ring in the 2-position which contains a halogen AND where L¹, L², or L³ is not hydrogen.

Conclusion

15. Claims 11-14 and 17 are rejected.
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey H. Murray whose telephone number is 571-272-9023. The examiner can normally be reached on Mon.-Thurs. 7:30-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached at 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey H Murray/
Patent Examiner
Art Unit 1624

**/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624**

